J. F. Barrett & Sons, Inc. *and* Connecticut Laborer's Funds, Laborer's International Union of North America. Case 34–CA–6639

October 31, 1994

DECISION AND ORDER

BY MEMBERS DEVANEY, BROWNING, AND COHEN

Upon a charge filed by Connecticut Laborer's Funds, Laborer's International Union of North America (the Funds) on July 8, 1994, the General Counsel of the National Labor Relations Board issued a complaint on August 10, 1994, against J. F. Barrett & Sons, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 23, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On September 27, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 29, 1994, notified the Respondent that unless an answer were received by September 9, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation, with an office and place of business in Milford, Connecticut, has been engaged as a contractor performing excavating work in the building and construction industry. During the 12-month period preceding issuance of the complaint, the Respondent provided services valued in excess of $50,000 to the city of Middletown, Connecticut, which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Connecticut Laborers District Council of the Laborers' International Union of North America, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About July 19, 1991, the Respondent entered into an "Acceptance of Agreements and Declarations of Trust" whereby it accepted and approved the then-effective collective-bargaining agreements between the Union and the labor relations division of the Associated General Contractors of Connecticut, Inc. (AGC) and the Union and the Connecticut Construction Industries Association, Inc. (CCIA) and agreed to be bound by such future agreements unless timely notice was given. The most recent agreements are effective for the period of April 1, 1993, through March 31, 1996.

About July 19, 1994, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union and since that date the Union has been recognized as such representative by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act.

For the period from July 19, 1991, through March 31, 1996, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

Since about January 25, 1994, the Respondent has unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreements by failing to make contractually required contributions to the Connecticut Laborers' Health, Pension, Annuity, and Legal Services Funds, and the New England Laborers' Training Trust Fund.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct above without prior notice to the Union and without affording the

Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees in the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that Respondent has violated Section 8(a)(5) and (1) by failing since January 25, 1994, to make contractually required contributions to the various fringe benefit funds, we shall order the Respondent to make whole its unit employees by making all contributions that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent contributions as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, J. F. Barrett & Sons, Inc., Milford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Connecticut Laborers District Council of the Laborers' International Union of North America, AFL–CIO, as the limited exclusive collective-bargaining representative of the unit described below, by failing and refusing to make contributions to various fringe benefit funds as required by the 1993–1996 collective-bargaining agreement:

> All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of the 1993–1996 collective-bargaining agreement with the Union by making all required fringe benefit fund contributions, and make whole its unit employees for any loss of benefits or expenses resulting from its failure to make such contributions since January 25, 1994, as set forth in the remedy section of this decision, with interest.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Milford, Connecticut, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 31, 1994

Dennis M. Devaney, Member

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Connecticut Laborers District Council of the Laborers' International Union of North America, AFL–CIO, as the limited exclusive collective-bargaining representative of the unit described below, by failing and refusing to make contributions to various fringe benefit funds as required by the 1993–1996 collective-bargaining agreement:

All laborers employed by us; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of the 1993–1996 collective-bargaining agreement with the Union by making all required fringe benefit fund contributions, and WE WILL make whole the unit employees for any loss of benefits or expenses resulting our failure to make such contributions since January 25, 1994, with interest.

J. F. BARRETT & SONS, INC.